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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,642	02/25/2002	Michael B. McLeod	2020310	3662
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PATRICK W. RASCHE ARMSTRONG TEASDALE LLP ONE METROPOLITAN SQUARE, SUITE 2600 ST. LOUIS, MO 63102-2740			EXAMINER LUONG, SHIAN TINH NHAN	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/082,642

Applicant(s)

MCLEOD ET AL.

Examiner

Shian T. Luong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12, 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young (US 5,390,847) in view of Flanagan et al. (US 6,050,419) and Marinelli et al (H1748) and/or Bamburg (US 2,894,672). Young discloses a system comprising at least one shipping unit, each shipping unit has at least two substantially open topped trays 10. Each of the tray is configured to be capable of being stacked atop another of the at least two trays by stacking tabs 22 and apertures 42. Each tray having a top, two sides 14,16 and a bottom 12. A cover 28 is operably configured to be positioned atop the uppermost one of the two open-topped shipping trays. The cover is substantially a pad with apertures 30 configured to receive the tab 22. Each shipping tray has a substantially the same top plan configuration and the cover has a plan configuration substantially the same as each of the two trays. The cover has a shoe box type lid configuration. On column 5, line 59, Young discloses that the top or lid 28 is optional and is removably attachable to the container 10. Therefore, it is up to the user's discretion whether to use a lid for the bottom container. When the lid is not applied for the bottom container, the bottom of the upper container serves as a lid for the bottom container. Alternatively, Bamburg is applied to show that a removable lid for a unit of stacked containers is only applied on the top

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container of the stack (see column 2, lines 58-59). Hence, it would have been obvious in view of Bamburg to use a lid to cover the uppermost container only.

Young does not disclose a binding member. But Flanagan et al. discloses a substantially flat, thin binding member 10 made out of paperboard material that is configured to wrap around 4 different areas of stacked articles. Similarly, Marinelli et al. teaches adhesively attach a binding strip to secure stacked articles as shown in Figures 16,17. The adhesive strip extends across the top, down the sides and across the bottom-most one of the two articles. The packs are bound together to facilitate handling and saving of space. Hence, it would have been obvious in view of Flanagan et al. and Marinelli et al. to provide a binding member that secures the stacked articles during shipment.

It would also have been obvious to one having ordinary skill in the art at the time the invention was made to make the binding band out of metal or plastic, the shipping tray and cover out of corrugated paperboard material or plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Applicant argues that due to element 18 as disclosed by Young, the bottom wall of the upper tray cannot serve as the lid of the bottom tray or container. Contrary to the statement, the bottom wall can function as a lid for the bottom tray. The bottom wall of the upper tray covers the opening in the lower bottom tray and element 18 while it sits on the perimeter tab of the bottom tray. Hence, element 18 does not prevent the lid function of the bottom tray.

3. Claims 1-12, 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blomfield et al. in view of Flanagan et al. (US 6,050,419) and Marinelli et al. (H1748) and

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Young and/or Bamburg (US 2,894,672) and Young. Blomfield discloses a system comprising at least one shipping unit, each shipping unit has at least two substantially open topped trays. Each of the tray is configured to be capable of being stacked atop another of the at least two trays by stacking tabs 14 and apertures 2. Each tray having a top, two sides and a bottom. The tray is fabricated from a single piece of paperboard material. Each tray has a front wall, a rear wall and a gusset positioned at each corner of the bottom wall. Each gusset extending diagonally connecting at least one of the front wall and the rear wall to at least one of the two opposing side walls.

Blomfield et al does not disclose a cover as recited in claim 1. But Young discloses a cover 28 operably configured to be positioned atop the uppermost one of the two open-topped shipping trays. The cover is substantially a pad with apertures 30 configured to receive the tab 22. Each shipping tray has a substantially the same top plan configuration and the cover has a plan configuration substantially the same as each of the two trays. The cover has a shoe box type lid configuration. On column 5, line 59, Young discloses that the top or lid 28 is optional and is removably attachable to the container 10. Therefore, it is up to the user's discretion whether to use a lid for the bottom container. When the lid is not applied for the bottom container, the bottom of the upper container serves as a lid for the bottom container. Alternatively, Bamburg is applied to show that a removable lid for a unit of stacked containers is only applied on the top container of the stack (see column 2, lines 58-59). Hence, it would have been obvious in view of Young and/or Bamburg to use a lid to cover the uppermost container only.

Blomfield also does not disclose a binding member. But Flanagan et al. discloses a substantially flat, thin binding member 10 made out of paperboard material that is configured to

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wrap around 4 different areas of stacked articles. Similarly, Marinelli et al. teaches adhesively attach a binding strip to secure stacked articles as shown in Figures 16,17. The adhesive strip extends across the top, down the sides and across the bottom-most one of the two articles. The packs are bound together to facilitate handling and saving of space. Hence, it would have been obvious in view of Flanagan et al. and Marinelli et al. to provide a binding member that secures the stacked articles during shipment.

It would also have been obvious to one having ordinary skill in the art at the time the invention as made to make the binding band out of metal or plastic, the shipping tray and cover out of corrugated paperboard material or plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

4. Claim 13 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 1, further in view of Corrugated Common Footprint. Although Young or Blomfield et al. shows identical stackable trays, it would have been obvious to stack other non-similar trays with alignable tabs. This is shown by Corrugated Common Footprint wherein a smaller stackable tray is on a top portion of a larger stackable tray. Hence, interchange different stackable tray are within the knowledge of one of ordinary skill in the art.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Erica Miller at (571) 272-4370.


For applicant's convenience, the official FAX number is **571-273-8300**. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify

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Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (571) 272-4557. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST. The examiner's supervisor Mickey Yu can be reached at (571) 272-4562 for urgent matters.

STL
February 2, 2006


Primary Examiner
Shian Luong
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